

PRE-HEARING CONFERENCE  
AND EVIDENTIARY HEARING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:                     )  
  )  
Application for Certification ) Docket No.  
for the Henrietta Peaker       ) 01-AFC-18  
Project                             )

CALIFORNIA ENERGY COMMISSION  
HEARING ROOM A  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

FRIDAY, JANUARY 4, 2002

10:07 A.M.

Reported By:

Peter Petty

Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

William Keese, Chairman

Garret Shean, Hearing Officer

STAFF PRESENT

Bob Eller, Project Manager

Lisa DeCarlo, Staff Counsel

Eric Knight

Will Walters, Aspen Environmental

PUBLIC ADVISER

Roberta Mendonca, Public Adviser

APPLICANT

Scott A. Galati  
Grattan and Galati

Doug Wheeler  
GWF Power Systems Company

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

## I N D E X

	Page
Proceedings	1
Opening Comments	1
Pre-Hearing Conference	1
Visual	5
Comments on Staff Assessment	13
Evidentiary Hearing	22
Adjournment	30
Certificate of Reporter	31

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

## E X H I B I T S

Exhibit	Received
Applicant	
AFC, 8/8/01	25
AFC Supplement, 9/21/01	25
Data Responses, 11/13/01	25
Revised PDOC, 11/21/01	25
Certificate of Cancellation of Land Conservation Contract 1853	25
Verification of Payment of Fees to Kern Water Bank Authority, 12/7/01	25
GWF Comments on Staff Assessment, 12/28/01	25
Kleinfelder Report, 1/3/02	25
Staff	
Staff Assessment	26
Errata to Staff Assessment	26
Changes to AG-C-3	26

1 P R O C E E D I N G S

2 HEARING OFFICER SHEAN: Okay, we're on  
3 the record. Good morning. I'm Garret Shean, the  
4 Hearing Officer in the Henrietta Application for  
5 Certification proceedings. This morning we are  
6 conducting a Pre-Hearing Conference. We may or  
7 may not be able to convert this into an  
8 Evidentiary Hearing, depending upon factors  
9 arising during the Pre-Hearing Conference and the  
10 presence of a Commissioner.

11 In any event, what we're going to do  
12 this morning is to go through the list appearing  
13 in Appendix A of the notice of the Pre-Hearing  
14 Conference, which lists the various topics that  
15 appear in the Presiding Member's Proposed  
16 Decision, and also they correspond to what's been  
17 in the Application for Certification and the  
18 Staff's Assessment. Our purpose is to determine  
19 whether or not any party who is present either  
20 here today or by telephone, since we have a  
21 teleconference setup, wishes to either present  
22 evidence or cross examine witnesses from other  
23 parties on any of those topics.

24 Today we have the Commission's Public  
25 Adviser, Ms. Roberta Mendonca, who is here to

1       assist anyone in their participation in this  
2       particular meeting.  If you would like to  
3       introduce yourself and let everybody know that  
4       you're here, and what you can do.

5               PUBLIC ADVISER MENDONCA:  Good morning.  
6       Thank you, Garret.  I'm Roberta Mendonca, the  
7       Public Adviser at the Energy Commission.  Thank  
8       you.

9               HEARING OFFICER SHEAN:  All right.  At  
10       this point why don't we have the parties who are  
11       present introduce themselves, and then we'll get  
12       any sort of brief opening statements of where we  
13       are.

14              Let me just indicate I am working off of  
15       the following documents.  We have not only the  
16       Application for Certification and the data  
17       adequacy submittals and the data responses by the  
18       Applicant -- and they are numerous and voluminous  
19       -- also, the Staff's Assessment, as well as most  
20       recently two documents.  One is the GWF comments  
21       on the Staff's Assessment, and the Energy  
22       Commission Staff's Errata to their Staff  
23       Assessment.

24              With that, we'll go to the Applicant for  
25       its introduction.

1                   MR. GALATI: My name is Scott Galati,  
2                   representing GWF on the Henrietta Peaker Project.  
3                   And with me today I have several members of GWF  
4                   and the consulting team available, if necessary.

5                   HEARING OFFICER SHEAN: Thank you.

6                   MR. ELLER: Bob Eller, Project Manager  
7                   for Staff. With me this morning is Lisa DeCarlo,  
8                   Staff Counsel.

9                   HEARING OFFICER SHEAN: Is there any  
10                  other party present in the audience? All right.

11                  Any member of the public, someone not  
12                  associated with either the Applicant or the  
13                  Commission Staff. All right. So it's just us, I  
14                  guess.

15                  And since we at least think we know what  
16                  we're doing, we can at this point indicate by  
17                  making sort of an opening statement the matters  
18                  that are reflected in the post-Staff Assessment or  
19                  a submittal, and go from there.

20                  MR. GALATI: On behalf of GWF, we  
21                  appreciate Staff working very diligently,  
22                  especially over the holidays, working on the Staff  
23                  Assessment and considering our comments. We  
24                  submitted our comments, and we believe that there  
25                  are a few issues that if we had an opportunity to

1 discuss with Staff in a workshop setting, we could  
2 bring to resolution, and that there would be no  
3 outstanding disputed issues. That's our goal, and  
4 we believe we can accomplish that today in a very  
5 short period of time.

6 HEARING OFFICER SHEAN: All right.

7 MR. ELLER: Staff agrees with the  
8 Applicant. We have Staff available for at least  
9 three issues this morning, either by phone or  
10 present at the conference, to discuss these  
11 issues. And we believe we can hopefully resolve  
12 the issues that remain this morning.

13 HEARING OFFICER SHEAN: Okay. Well,  
14 let's at least indicate for the record, before we  
15 may break into a workshop format, what we think  
16 these are. I understand that it may be something  
17 on the Visual Condition 6; is that right?

18 MR. GALATI: That's correct.

19 HEARING OFFICER SHEAN: Okay. Are your  
20 Visual people here today?

21 MR. ELLER: Yes, they are.

22 HEARING OFFICER SHEAN: Because I had a  
23 question. I mean, it's no secret I've been  
24 working on the preparation of the PMPD, and had a  
25 couple of questions with regard to the Visual

1 Conditions.

2 MR. ELLER: I'll ask Eric Knight to join  
3 us.

4 HEARING OFFICER SHEAN: All right.

5 Since for now we are not set up as a  
6 Evidentiary Hearing, we will not swear Mr. Knight  
7 in. But I think we all assume we're working on  
8 the basis that we're telling each other the truth.

9 Okay. Mr. Knight, I just had a couple  
10 of questions, because I'm trying to understand  
11 what the mitigation to be applied to this  
12 particular project is. And am I correct in  
13 understanding that what's proposed here for at  
14 least the perimeter of the facility is either a  
15 fence or a wall, and that the wall would be a  
16 solid wall? Is that -- well, first of all, let me  
17 ask the Applicant.

18 Is a solid wall part of your proposal?

19 MR. GALATI: I'd like Mr. Doug Wheeler  
20 to come up here and maybe assist us.

21 MR. WHEELER: Doug Wheeler, representing  
22 GWF.

23 What we have proposed is a fence, with  
24 colored slats.

25 HEARING OFFICER SHEAN: Okay. So this

1       would be what I would commonly call a cyclone  
2       fence that had slats of some material, essentially  
3       diagonally through the --

4               MR. WHEELER:   That's --

5               HEARING OFFICER SHEAN:  -- through the  
6       metal webbing.  Right?

7               MR. WHEELER:   That's correct, yes.

8               HEARING OFFICER SHEAN:  Okay.  And are  
9       you putting the slats or screening in for  
10      aesthetic purposes, or security purposes, or what  
11      do you have in mind there?

12              MR. WHEELER:   Well, the fence itself is  
13      for security purposes.  The slatting is for  
14      esthetics.

15              HEARING OFFICER SHEAN:  Okay.  And so  
16      that's the extent of it.  The vegetative screening  
17      and things like that were not part of your  
18      proposal; is that right?

19              MR. WHEELER:   That's correct.  Yes.

20              HEARING OFFICER SHEAN:  Okay.  Well, let  
21      me then go --

22              MR. WHEELER:   We planned on landscaping.

23              HEARING OFFICER SHEAN:  Right.  To the  
24      Staff.  So if I understand correctly, either the  
25      concept of a solid wall instead of a fence, and

1 the addition of the vegetative screening, is a  
2 Staff proposed mitigation. Is that right?

3 MR. KNIGHT: I believe it's only  
4 landscaping. We just --

5 HEARING OFFICER SHEAN: Okay.

6 MR. KNIGHT: -- we evaluated the fence  
7 as all other project structures, and it appeared  
8 to be a solid wall, but we didn't find that it  
9 caused a significant visual impact so we weren't  
10 requiring mitigation for the fence, per se, just  
11 for the project as a whole.

12 HEARING OFFICER SHEAN: Okay. And the  
13 vegetative screening is -- if I understand that  
14 there were no visual impacts, is that a pre-  
15 vegetative screening conclusion, or a post-  
16 vegetative screening conclusion?

17 MR. KNIGHT: With mitigation with the  
18 landscaping, there would be no significant visual  
19 impact. Unmitigated visual impact.

20 HEARING OFFICER SHEAN: And, okay, with  
21 the landscaping it's insignificant.

22 MR. KNIGHT: Correct.

23 HEARING OFFICER SHEAN: Without it, you  
24 believe it to be significant?

25 MR. KNIGHT: From that one KOP, KOP5,

1           that was established by the Applicant.

2                   HEARING OFFICER SHEAN:  And that KOP5 is  
3           essentially from the south?

4                   MR. KNIGHT:  Yes.

5                   HEARING OFFICER SHEAN:  With a little  
6           bit west, but essentially the south.

7                   MR. KNIGHT:  Yes.

8                   HEARING OFFICER SHEAN:  And that's the  
9           --

10                  MR. KNIGHT:  Twenty-fifth Avenue is what  
11           it is.

12                  HEARING OFFICER SHEAN:  -- 25th Avenue  
13           view of the project.

14                  MR. KNIGHT:  Yeah.

15                  HEARING OFFICER SHEAN:  At least from  
16           the past, in my understanding of the way we've  
17           conducted our analysis of visual impact.  To the  
18           extent that a feature is introduced into an  
19           existing view shed, I guess the idea is to  
20           minimize the contrast and so on, like that.

21                  The thing I'm wondering is how is it  
22           that the vegetation in this particular instance is  
23           going to significantly reduce the visual effect of  
24           the project, particularly when there's no other  
25           vegetation of this type around.  Isn't -- won't

1       this become essentially a vegetative wall?

2               MR. KNIGHT:  The idea of the vegetation  
3       was that it was -- it would appear like what you'd  
4       see in agricultural areas, so the idea was the,  
5       you know, the Chinese Pistache, which is what's  
6       seen in the area.  And right now the site's  
7       covered in cotton, so it has an agricultural  
8       nature to it, so adding those trees would have  
9       some relation to the surrounding area.  And the  
10      idea was that the power plant structures  
11      themselves, the geometric forms, the vertical  
12      forms, cause the high degree of contrast with the  
13      setting, and also in terms of scale dominance the  
14      project, it was a strong level of scale dominance.

15             So those two combined caused a  
16      significant visual impact at that sensitivity  
17      level, so with the screening it would reduce, we  
18      thought it would reduce those impacts to a level  
19      that was less than significant.

20             And actually, there's a -- looking at  
21      this a little bit further, I've discussed with  
22      David Tatsumi, who's actually the author of the  
23      testimony, I'm representing him today, it was felt  
24      the Chinese Pistache is a deciduous tree, so, in,  
25      you know, in the wintertime, there would be no

1 leaves on those trees, so it wouldn't reduce the  
2 contrast. So I would suggest that -- and he  
3 agreed, and he developed some additional language  
4 to add on the southern perimeter, a row of  
5 evergreen trees that would mimic like a wind row,  
6 which would also be typical of the area.

7 So maybe one row of wind row evergreen  
8 trees, and he gave an example of one. I think it  
9 grows to about -- I can't remember. I have it in  
10 my notes. It's not a very tall tree, but it would  
11 sufficiently screen the power plant, and then have  
12 the row of orchard trees in front.

13 HEARING OFFICER SHEAN: I'm just trying  
14 to recall from the drive out there. Have you been  
15 to the site?

16 MR. KNIGHT: I haven't visited the site.  
17 I'm overseeing the analysis for the Commission.

18 HEARING OFFICER SHEAN: Okay. Any other  
19 orchard setting in that area? Are -- let me go  
20 back to the Applicant. Are you familiar with  
21 anything like that within -- I mean, the only  
22 other sort of wall and vegetative thing is once  
23 you get over to the Naval Air Station side, they  
24 have a little bit of greenery. But other than  
25 that, on either 25 or the highway in from 5, and I

1 forget the number of it, it's like 198 or  
2 something like that.

3 MR. WHEELER: One ninety-eight, that's  
4 correct. There are no orchards on 25th Avenue in  
5 the vicinity of the project. On 198, if you're  
6 traveling east on 198, towards the Naval Air  
7 Station, there is a -- some kind of an orchard  
8 that's approximately three miles, three to four  
9 miles west of the project site.

10 HEARING OFFICER SHEAN: Okay. Now, does  
11 the Applicant take issue with this condition? I  
12 mean, do you want something less than what Staff  
13 is recommending, or not at all?

14 MR. GALATI: Well, our initial comments  
15 were that we didn't believe that there was a  
16 significant impact that needed to be mitigated. I  
17 think we're willing to work with Staff to -- our  
18 real issue is deal with screening of the west  
19 side, and with the three rows of trees, and if  
20 there's some other accommodation we can come to to  
21 do something on the south side less than what  
22 Staff has proposed, or at least have the  
23 flexibility to submit our own plan and have the  
24 CPM review it and approve it, rather than have it  
25 dictated how many rows, what kinds of trees, that

1       would be something we'd be willing to consider if  
2       we're talking about the south side.

3               HEARING OFFICER SHEAN:  Okay.  Well, it  
4       just seems to me that as I both read it and  
5       contemplate what it is, and having been to the  
6       site, think about it, that there's a certain  
7       amount of overkill to what's being suggested here.  
8       It's fundamentally just an enhancement.  We're  
9       trying to put a little window dressing around this  
10      facility, and I don't recall any other feature,  
11      either in the immediate area or close by, that  
12      resembles what's being proposed here, which isn't  
13      to say we can't dress it up a bit.

14             But it's -- to have a three, four lines  
15      of trees for the length of the project seems like  
16      it in itself would become a feature as distinct in  
17      the setting as the facility.

18             MR. KNIGHT:  Well, according to David  
19      Tatsumi's assessment in his visit of the area, and  
20      in the region, not just in a part of the setting  
21      discussion, he does say that there are occasional  
22      fruit orchards in the region, so he doesn't define  
23      how far out the region is.  But, so, you know, he  
24      did --

25             HEARING OFFICER SHEAN:  Okay.

1 MR. KNIGHT: -- he did spot them, so  
2 that's, you know.

3 HEARING OFFICER SHEAN: All right.  
4 Well, just for what it's worth. I mean, I've only  
5 done about three dozen of these things, and I have  
6 a pretty good idea of what -- and I know this  
7 visual area is relatively subjective, and we try  
8 to apply certain standards to it. But, at least  
9 that's the comment I have on it.

10 MR. GALATI: And, you know, GWF is  
11 committed to doing something on the south side to  
12 dress up the project, and hopefully we can work  
13 with Staff and come up with language that provides  
14 us some sort of flexibility and still get us to  
15 the same point. It's -- we're very concerned  
16 about the west side.

17 HEARING OFFICER SHEAN: Good. All  
18 right. Thank you very much. Appreciate you  
19 coming up and talking with us.

20 How about the other issues. Was there  
21 something on -- well, why don't you just tell me.  
22 I understand Haz Mat might be one of them.

23 MR. ELLER: Perhaps it would be helpful  
24 if I went through the Applicant's comments on the  
25 Staff Assessment --

1 HEARING OFFICER SHEAN: Sure.

2 MR. ELLER: -- and gave our position on  
3 them at this point.

4 HEARING OFFICER SHEAN: You bet.

5 MR. ELLER: On Air Quality, we have  
6 reviewed the Staff -- or, the Staff has reviewed  
7 the comments. And then let me make first a  
8 general comment. Throughout their comments on our  
9 Staff Assessment, they've indicated that they  
10 would like to insert the phrase, "or a lesser time  
11 as mutually agreed to", in response to timing  
12 issues for construction.

13 Staff believes this is unnecessary, that  
14 this is covered under the general conditions as a  
15 given; that we are -- we have available to us the  
16 ability to modify time within the -- in the  
17 verification. Those times are needed generally  
18 for Staff to have adequate time to review  
19 submittals prior to construction. We are willing  
20 to work with the Applicant on a case by case basis  
21 where they need to have shorter timeframes than  
22 specified in the verification, in order to meet  
23 construction schedules.

24 So on a general note, we don't believe  
25 those additions are needed throughout the

1 document.

2 HEARING OFFICER SHEAN: And let me just  
3 indicate, and I did it while we were gathering to  
4 commence the meeting, I know you're, in your  
5 General Compliance section, which would be  
6 Sections 5, page 4 and page 5, in prior decisions  
7 that I have been involved in we have specifically  
8 included language that is intended to be a blanket  
9 so that everyone would understand that between the  
10 project owner and the compliance project manager  
11 have almost infinite flexibility with regard to --  
12 unless it's stated otherwise -- to modify the  
13 timeframes for the submittal of verifications, and  
14 perhaps even to some degree the verification  
15 format itself.

16 We have an objective here to accomplish.  
17 We are -- this is, in that sense, we're trying to  
18 get the result, not to get the particular time nor  
19 a particular type of document, but fulfill the  
20 intentions of the Commission in its conditions,  
21 and have them verified in some way.

22 So as I look at this, right off the top  
23 of my head I can't -- it doesn't appear that the  
24 sentence that I have in mind is here, but it will  
25 be. So.

1                   MR. GALATI: Mr. Hearing Officer, we  
2            appreciate that. One of the reasons we wanted it  
3            actually in writing in a way -- and we would be  
4            fine with it being in writing in the General  
5            Conditions -- is something to point to towards  
6            financing on a very aggressive schedule project  
7            with a firm online date, something to -- so that  
8            from a financing standpoint, somebody doesn't say  
9            did you submit something, because the verification  
10          says 60 days prior to construction. If we had  
11          someplace else to point to them that that is not  
12          an absolute non-compliance with the condition,  
13          because we had not yet submitted it, that is  
14          helpful. And it sounds like the language you're  
15          anticipating and proposing for the General  
16          Conditions would be fine with us.

17                HEARING OFFICER SHEAN: I think it will  
18          be. And if you want a sample, you can just look  
19          at everything from Contra Costa to Huntington  
20          Beach to Valero, and stuff like that, and I think  
21          you'll find it in there.

22                MS. DeCARLO: And we do have some  
23          language in the compliance that the condition that  
24          says the verification procedures, unlike the  
25          conditions, may be modified as necessary by the

1 CPM, and in most cases, without full Energy  
2 Commission approval. So it does delineate some  
3 flexibility there.

4 HEARING OFFICER SHEAN: Right. And I  
5 think that's what we intended to capture. I'll  
6 just make sure that we've got it the way we want  
7 it.

8 MR. GALATI: It's the specific language  
9 on most times financing will say, well, then  
10 there's some times that you have to go to  
11 Commission and get it changed.

12 HEARING OFFICER SHEAN: I understand  
13 that. Right. Okay.

14 MR. ELLER: We would hope that none of  
15 those times are contained in a condition, that  
16 they're all on verification, which can be modified  
17 by Staff.

18 HEARING OFFICER SHEAN: Right. And I've  
19 reviewed the conditions, and I believe that there  
20 are none that would give anybody --

21 MR. ELLER: And that was Staff's goal.

22 HEARING OFFICER SHEAN: -- any  
23 heartburn. Okay. All right. Mr. Eller.

24 MR. ELLER: With regard to the rest of  
25 the comments. In Air Quality, Staff is generally

1 in agreement with the remainder of the comments in  
2 Air Quality. There was an issue raised about Air  
3 Quality C-3, the chart contained in the condition.  
4 I have just provided language to the Applicant,  
5 that I was provided by Staff this morning,  
6 modifying that condition, so we look to discuss  
7 that in a workshop setting.

8 Biology had no comments. Cultural  
9 Resources were all related to the timing.

10 In Hazardous Materials and Worker  
11 Safety, they're asking us to strike some language.  
12 Some of them require approval by the CPM. We do  
13 not believe it's appropriate to strike that  
14 language.

15 Under Land Use, we have modified in our  
16 Staff Errata the Land Use section to reflect the  
17 fact that the Kings County met on December 27th  
18 and cancelled the land use conservation, so I  
19 believe we've met most of those comments by our  
20 Errata to the document.

21 Under Noise and Vibration, we will  
22 accept that condition, or the modification as  
23 proposed by the Applicant. Public Health and  
24 Socioeconomics had no comments.

25 Soil and Water Resources, the attempt --

1 MR. WALTERS: Hello, Will Walters here.

2 MR. ELLER: Good morning, Will. Thank  
3 you. One moment.

4 They have attempted to modify  
5 conditions, and we don't believe -- we want to  
6 discuss that with them this morning. We don't  
7 believe that the method they've used is  
8 appropriate at this point and we want to talk to  
9 them about that.

10 Traffic and Transportation were all  
11 timing. Traffic Line Safety and Nuisance, that  
12 was a timing issue. Under Visual, I think we've  
13 discussed some of that and we'll discuss it  
14 further. VIS-2, yes, there's a -- they want to  
15 change from during manufacture to or any event  
16 prior to delivery. In our review of the coatings  
17 for buildings and materials, we believe that if  
18 that change were made we would lose our ability to  
19 make any changes, so we want to talk to them about  
20 that.

21 Under Waste Management, we want to talk  
22 about the generating. They wanted to strike  
23 generating from Waste Management 1. In relation  
24 to getting an ID they wanted to go to prior to  
25 shipping obtaining the ID. We do not believe

1       that's appropriate.

2               Facility Design had no comments.

3       Geology, Mineral and Paleontology, we are fine  
4       with the changes proposed, although PAL-1 is a  
5       change to the timing. We do not believe that  
6       one's appropriate. PAL-4 wants to strike and  
7       identify, inserting or likely to be found. We  
8       believe that's fine. The remaining issue in  
9       Transmission System Engineering is a timing issue.

10              I believe that covers the Applicant's  
11       comments.

12              MR. GALATI: Mr. Shean, if I could  
13       briefly just inform you that we agree with Staff's  
14       proposed changes to AQC-3 on Air Quality.

15              With respect to Land Use, we agree with  
16       the Errata that Staff has provided, and we do have  
17       and will mark as an exhibit -- it is probably  
18       being docketed as we speak -- the actual  
19       certificate of cancellation, as well. We thought  
20       it was actually attached to the Board of  
21       Supervisors approval, but it wasn't, so we have  
22       that, as well.

23              And with respect to VIS-2, VIS-6, Waste  
24       Management 1, and Soil and Water, we're looking  
25       forward to talking to the Staff, and believe we'll

1 be able to resolve those issues.

2 HEARING OFFICER SHEAN: Okay. I guess  
3 at this point, then, the better thing to do, the  
4 best use of the time we have available is to  
5 essentially take a recess from this portion of the  
6 Pre-Hearing Conference and let you guys get at it,  
7 in terms of a workshop setting.

8 Do you have an estimate of what kind of  
9 time you think you're going to need?

10 MR. GALATI: I would think an hour.

11 HEARING OFFICER SHEAN: Okay. Why don't  
12 we come back at 11:30, then. And let's try to  
13 actually do that. And I will go look for a  
14 Commissioner to return with me at that point and  
15 we'll keep going.

16 Now, let me just indicate for the  
17 record, if I'm unable to do that, since our -- in  
18 the same notice of this particular Pre-Hearing  
19 Conference we have a revised schedule which would  
20 show an Evidentiary Hearing on January 17th,  
21 should we be unable to -- first of all, should all  
22 the issues essentially settle out, and we would be  
23 in a position to open and complete the record, or  
24 most of it, today, I'm looking for a Commissioner  
25 to be present for that purpose.

1           If we're unable to do that, then we will  
2           come back and hold a relatively perfunctory and  
3           very short Evidentiary Hearing on the 17th, and at  
4           some point shortly thereafter, get the Presiding  
5           Member's Proposed Decision out.

6           But why don't we break now, get us into  
7           the workshop format, and we'll be back at 11:30.

8           Thank you.

9           (Off the record.)

10          HEARING OFFICER SHEAN: At this point we  
11          have Chairman Keese with us.

12          I want to just sort of finish off the  
13          Pre-Hearing Conference aspects of this to  
14          determine whether there's any matter listed on  
15          Appendix A of the notice that either of the  
16          parties who are present here wish to present other  
17          than by declaration.

18          MR. GALATI: Not on behalf of the  
19          Applicant. I'd be remiss if I didn't reserve the  
20          right to comment on the language we worked out on  
21          Water.

22          MS. DeCARLO: I'm sorry. Was that  
23          topics, or documents that you're referring to?

24          HEARING OFFICER SHEAN: Are you prepared  
25          to submit your Staff Assessment on the

1        declarations that support it, and not ask for the  
2        Applicant to present any of its witnesses in  
3        support of the AFC, data responses, and data  
4        adequacy responses if they --

5                MS. DeCARLO:  Yes, I believe we're in  
6        agreement with all the suggested --

7                HEARING OFFICER SHEAN:  Okay.  Well,  
8        then let's just go through that and we'll get it  
9        through.  And let me say I understand there may be  
10       new language with respect to conditions.  
11       Conditions are entirely within the discretion of  
12       the Committee.  They are based upon the  
13       evidentiary record which is going to be  
14       established by the documentation that each of the  
15       two parties is going to submit, and the  
16       suggestions with regard to changes in the proposed  
17       conditions can be made after the close of the  
18       record.  They are essentially administrative.

19               MS. DeCARLO:  I would just like to  
20       request that since we're leaving part of the  
21       record open for the FDOC submittal, that we could  
22       also leave part of the record open for a submittal  
23       of changes to conditions, and do so at that time.

24               HEARING OFFICER SHEAN:  That would be  
25       fine.  Because at the point we get the FDOC, which

1 will probably be -- we will pick this up in the  
2 comment hearing on the PMPD.

3 Okay. So with that, let's have the  
4 Applicant's offer of its evidence.

5 MR. GALATI: Yes. I would offer our  
6 first exhibit would be the Application for  
7 Certification dated 8/23/01, docketed on the same  
8 day. Also, the Application for Certification  
9 supplement, dated 9/21/01 and docketed on October  
10 9th, '01. The data responses that were docketed  
11 and dated 11/13/01 are supplemental data responses  
12 which were dated and docketed on 11/30/01.

13 At this time I would like to add into  
14 the record the Revised Preliminary Determination  
15 of Compliance, which was dated and docketed on  
16 11/21/01.

17 I would also like to add into the  
18 record Certificate of Cancellation of a portion of  
19 Land Conservation Contract Number 1853, and Kings  
20 County Board of Supervisors approval on -- dated  
21 12/27/01, and docketed today, 1/4/02. In summary,  
22 that is the cancellation of the Williamson Act  
23 contract and all approvals necessary.

24 I would also like to have moved into the  
25 record a verification of payment of mitigation

1 fees to Kern Water Bank Authority, which is a  
2 letter dated 12/7/01, docketed on 1/4/02.

3 I would also like to have GWF comments  
4 on the Staff Assessment, which were dated 12/28/01  
5 and docketed on the same date. That exhibit would  
6 be GWF's supplemental comments on Staff  
7 Assessment, which were dated 1/3/02, and docketed  
8 on 1/4/02.

9 And the last exhibit would be the  
10 installation and sampling of monitoring well  
11 report prepared by Kleinfelder, dated 1/3/02, and  
12 docketed 1/4/02. And Kleinfelder is spelled K-l-  
13 e-i-n-f-e-l-d-e-r.

14 That concludes our exhibits, and I have  
15 copies if the Committee would like them.

16 HEARING OFFICER SHEAN: Not at this  
17 time. Is there objection to admission into  
18 evidence the enumerated evidence of the Applicant?

19 MS. DeCARLO: No objections.

20 HEARING OFFICER SHEAN: All right.

21 Hearing none, it's admitted.

22 (Thereupon the above-referenced  
23 Applicant documents were admitted  
24 into evidence.)

25 HEARING OFFICER SHEAN: Staff, it's your

1 turn.

2 MS. DeCARLO: We have the Staff  
3 Assessment to enter into the record. And also,  
4 the Errata to GWF Henrietta Peaker Project Staff  
5 Assessment that was docketed yesterday, January  
6 3rd.

7 HEARING OFFICER SHEAN: Any objection to  
8 admission into evidence of the Staff Assessment  
9 and the Errata?

10 MS. DeCARLO: Oh, and I'm sorry. We  
11 also have changes to AQ-C3 that we just formalized  
12 today. We would like to enter that into the  
13 record, as well.

14 HEARING OFFICER SHEAN: Okay, those  
15 items, is there objection?

16 MR. GALATI: No objection.

17 HEARING OFFICER SHEAN: All right,  
18 they're admitted.

19 (Thereupon the above-referenced  
20 Staff documents were admitted  
21 into evidence.)

22 HEARING OFFICER SHEAN: Is there any  
23 other evidentiary matter that either of the  
24 parties wish to bring to the Committee?

25 MS. DeCARLO: We would like to read into

1 the record certain changes that we've made. Or  
2 would you prefer to have those in writing?

3 HEARING OFFICER SHEAN: I think what  
4 we'd rather have you do is submit that in written  
5 form, because that way we can essentially -- and  
6 submit it in electronic form, so that we can turn  
7 it over into the PMPD document.

8 MR. GALATI: No objection.

9 HEARING OFFICER SHEAN: Good. Well,  
10 with that, we'd like to thank the Chairman for his  
11 presence here today.

12 CHAIRMAN KEESE: Glad to be of service.

13 (Laughter.)

14 MR. GALATI: Mr. Hearing Officer, just  
15 for clarification.

16 HEARING OFFICER SHEAN: Yes.

17 MR. GALATI: On the 17th, we will be  
18 receiving the FDOC into the record. I would --

19 HEARING OFFICER SHEAN: I'm not sure  
20 it'll be on the 17th.

21 MR. GALATI: Okay.

22 HEARING OFFICER SHEAN: We are -- at the  
23 point that we publish the PMPD we will indicate  
24 when there will be a public hearing on that. At  
25 that point we will have left the record open for

1       the purpose of taking in the Final Determination  
2       of Compliance, and, if it should have to happen,  
3       any other matter. I think -- and one of the  
4       questions I was going to ask you is the status of  
5       the Farm Trust agreement.

6               MR. WHEELER: We have -- the agreement  
7       should be finalized by Wednesday of next week. We  
8       did send to Staff an e-mail that we received from  
9       the American Farmland Trust, laying out their  
10      schedule for completing it, along with a draft of  
11      the mitigation agreement.

12             HEARING OFFICER SHEAN: Okay. Having  
13      heard that section already, my clear recollection  
14      is that we're anticipating that certification  
15      would be dependent upon your producing some sort  
16      of final agreement, executed agreement from them  
17      so that the issue of the compensatory farmland  
18      easements is addressed.

19             MR. WHEELER: Yes.

20             HEARING OFFICER SHEAN: Okay. And so it  
21      sounds as if you're on track to do that.

22             MR. WHEELER: Yes, we are.

23             HEARING OFFICER SHEAN: Okay. All  
24      right. Now, with the record now established, but  
25      continuing open, with the materials that you have

1       discussed today and will be submitting in some  
2       written form at your earliest reasonable  
3       convenience, is there any other matter we need to  
4       address before we adjourn this morning's hearing?

5               MR. GALATI:  No.  Just for  
6       clarification, the PMPD will be issued, and then  
7       any public hearing on the FDOC can take place  
8       after the PMPD is issued?

9               HEARING OFFICER SHEAN:  Yes.

10              MR. GALATI:  Thank you.

11              HEARING OFFICER SHEAN:  I think the  
12       sequence we have in mind is that at the public  
13       hearing on the PMPD, we will include taking it  
14       into evidence so that the record is fully  
15       complete.  And at the same time, I would say we  
16       will take into evidence the execution of the  
17       Farmland Trust Agreement to complete the record in  
18       that sense.

19              Okay.  Anything from Staff?

20              MS. DeCARLO:  No, nothing.

21              HEARING OFFICER SHEAN:  All right.  Let  
22       me just indicate for the record, because I think  
23       it should be stated.  I think Staff did an  
24       exemplary and outstanding job of getting your  
25       Staff Assessment completed in December in the, you

1 know, basically in the teeth of the holidays. And  
2 I'd like to thank Mr. Eller for his efforts on  
3 that, Ms. DeCarlo for your supporting efforts in  
4 that, and to all the Staff who basically hurried  
5 to get that done, and I hope were thus able to  
6 better enjoy the holidays.

7 And also, the Applicant's  
8 forthcomingness on your comments and, because  
9 you've been working through the holidays, as well,  
10 and I think what we've been able to do as a result  
11 of these efforts is keep this thing relatively on  
12 track. It looks like a good project. It was all  
13 acknowledged through the discussions before the  
14 Commission on the status of this project. And we  
15 want to try to keep it moving and then get it to  
16 the point where you can begin to construct it in  
17 accordance with the best interests of the State of  
18 California and the best interests of the  
19 environment, and get it online.

20 So thank you very much. Our hearing  
21 this morning is concluded.

22 (Thereupon the hearing was  
23 concluded at 11:49 a.m.)

24  
25

## CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,  
do hereby certify that I am a disinterested person  
herein; that I recorded the foregoing California  
Energy Commission Pre-Hearing Conference and  
Evidentiary Hearing; that it was thereafter  
transcribed into typewriting.

I further certify that I am not of  
counsel or attorney for any of the parties to said  
Hearing, not in any way interested in the outcome  
of said Hearing.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 11th day of January, 2002.

PETER PETTY

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

□